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and Putative Opt-in Plaintiffs*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALBERTO DELARA, on behalf of himself and
others similarly situated,

Plaintiff,

v.

DIAMOND RESORTS INTERNATIONAL
MARKETING, INC.,

Defendant.

Case No. 2:19-cv-00022-APG-NJK

STIPULATION AND ORDER FOR
A STAY OF PROCEEDINGS UNTIL
DECEMBER 7, 2020, FOR THE
PARTIES TO PREPARE FOR AND
ATTEND MEDIATION

Plaintiff and Defendant HEREBY STIPULATE AND AGREE, by and through their
respective counsel, as to the following:

1 1. The parties and their counsel have agreed to mediate the case subject to the terms
2 set forth herein and in that regard, have scheduled a mediation on December 7, 2020, with Steve
3 Rottman, a mediator who is nationally recognized in mediating large class and collective actions.
4 Given the high demand for Mr. Rottman's mediation services and his limited availability, and for
5 the reasons discussed below regarding additional supplementation of previously served written
6 discovery, the parties request a stay of proceedings through December 7, 2020, including the
7 August 13, 2020 Rule 30(b)(6) deposition deadline, the September 14, 2020 dispositive motion
8 deadline and the October 14, 2020 Joint Pretrial Order deadline.¹ The parties believe the proposed
9 stay is in the parties' and the Court's interests in costs and efficiency.

10 2. On July 8, 2019, Plaintiff filed his Motion for Conditional Certification of the
11 Matter as a Collective Action and Approval of 29 U.S.C. §216(b) Notice. [ECF No. 31]. The
12 matter was fully briefed, and briefing concluded on July 29, 2019. [ECF Nos. 32 & 33].

13 3. During the pendency of Plaintiff's Motion for Conditional Certification, the parties
14 continued with their written discovery as it related to Defendant and named Plaintiff Delara, and
15 Opt-in Plaintiffs Chiapponi, Moratelli and Gennari, who had opted-in prior to the filing of
16 Plaintiff's Motion for Conditional Certification.

17 4. Defendant deposed Plaintiff and Opt-in Plaintiffs Chiapponi, Moratelli and Gennari
18 on February 11 – 14, 2020.

19 5. On February 10, 2020, Plaintiff served Defendant with a Notice of Deposition
20 pursuant to Fed. R. Civ. P. 30(b)(6), requiring Defendant to designate and produce a person or
21 persons qualified to testify on 21 topics. The deposition was noticed for February 27, 2020, in the
22 Las Vegas, Nevada offices of Plaintiff's counsel. Ten days later, on February 20, 2020, Defendant
23 advised Plaintiff that neither defense counsel nor Defendant's designees were available for
24 deposition on February 27, 2020, and requested that the deposition be rescheduled.

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26
27 ¹ The stay would not include the current opt-in process or the filing of additional consents to join the action by
28 Plaintiff's counsel, any supplementation of written discovery requests previously propounded and continued meet and
confer thereon. Plaintiff specifically reserves the right to seek relief from the Court in the event the parties reach an
impasse on discovery issues related to written discovery requests previously propounded.

1 6. Defendant also served written objections as to all 21 topics of Plaintiff's Notice.
2 The parties worked diligently together to resolve them, with Defendant reserving the right to object
3 to specific questions in the depositions, including specifically on the basis of attorney/client
4 privilege, and Plaintiff reserving the right to argue that Defendant waived the attorney/client
5 privilege and/or that said information is discoverable. With this understanding, Defendant
6 designated four designees to cover the Rule 30(b)(6) topics: 2 designees who would be deposed
7 in Las Vegas, Nevada, and 2 designees who would be deposed in Orlando, Florida. Based on the
8 parties' schedules, the parties agreed that the Florida depositions would take place on March 19,
9 2020, and the Las Vegas depositions would take place on March 24, 2020.

10 7. Due to the COVID-19 pandemic, the Rule 30(b)(6) depositions were temporarily
11 postponed.

12 8. The country is still affected by the COVID-19 pandemic, and there are recent
13 reports of a rise in the number of COVID-19 cases.

14 9. Given the number of documents and logistical issues involved, Plaintiff's position
15 is that remote depositions are impracticable, especially given that Defendant and Defendant's
16 counsel and, in some cases, witnesses, as well as Plaintiff's counsel, are located in different states.
17 Based on the foregoing, the parties have agreed to postpone these depositions pursuant to the
18 stipulation to stay proceedings subject to the Court's approval.

19 10. Since March 2020, the parties have continued to meet and confer in good faith
20 regarding supplementation of written discovery, exchanging numerous letters and engaging in two
21 extensive meet and confer conference calls lasting 2 ½ and 3 hours respectively. As a result, the
22 parties have exchanged numerous supplemental discovery responses and this process is still
23 ongoing.

24 11. On April 30, 2020, the Court granted Plaintiff's Motion for Conditional
25 Certification. [ECF No. 64]. As part of the relief sought, the Court approved the notice and
26 consent form (ECF No. 79), which were sent to putative opt-in plaintiffs on June 11, 2020. Per
27
28

1 the Court's April 30, 2020 Order, putative opt-in Plaintiffs have until September 9, 2020, to file
2 consents and join the lawsuit.

3 12. At this juncture, 186 individuals have filed consents to join this action.² Plaintiff
4 anticipates that the number of opt-in plaintiffs will exceed 200 individuals by the time the period
5 to join the lawsuit ends on September 9, 2020.

6 13. On January 27, 2020, Plaintiff served his Request for Admission, First Set of
7 Interrogatories and Second Requests for Production of Documents to Defendant. As part of the
8 discovery, Plaintiff sought information and documents regarding putative opt-in plaintiffs,
9 including but not limited to their personnel files, time records and pay records. Given that the
10 Court still had Plaintiff's Motion for Conditional Certification under advisement, Defendant
11 objected to producing information and documents as to putative opt-in plaintiffs on a variety of
12 grounds, in part, taking the position that the production of such information or documents was
13 premature before any granting of conditional certification.

14 14. While the meet and confer process has continued since March 2020, once the opt-
15 in period ends on September 9, 2020, the parties will have further discussions regarding
16 supplementation of written discovery, including, but not limited to opt-in plaintiffs, including
17 production of time and pay records which are relevant to the issues of liability and damages
18 necessary for the forthcoming mediation. Given the large number of opt-in plaintiffs and the
19 volume of documents and information related to these individuals, this will be a time-consuming
20 process requiring significant additional meet and confers between the parties.

21 15. Based on the foregoing, the parties are of the belief that December 7, 2020, is an
22 appropriate date for mediation.

23 16. The parties recognize that substantial time and costs will be expended to review the
24 considerable amount of information produced to date and to be produced as discovery progresses.
25 The parties agree that it is in the best interest of all parties to wait until the mediation process is
26

27 ² Defendant hereby specifically reserves its continued rights to challenge, by motion after the stay period, opt-in class
28 members' standing and/or the Court's jurisdiction over claims asserted by certain individuals and nothing herein is
intended to waive any of those rights.

1 complete prior to incurring the time and expense of depositions and motion practice, as the
2 mediation could resolve this matter in its entirety, thereby relieving the parties of further costs and
3 expenses and relieving the Court of taxes upon its resources.

4 17. It would be counterproductive to the parties' settlement efforts to have the parties
5 incur the expense of time-consuming and costly depositions and motion practice because the
6 parties have agreed to stay such proceedings in favor of attempting to achieve a resolution to this
7 matter. Rule 1 of the Federal Rules of Civil Procedure provides that the federal rules of practice
8 should be "construed and administered to secure the just, speedy, and inexpensive determination
9 of every action and proceeding." (Emphasis added). If the Court does not grant a stay, the parties
10 will be required to engage in and incur the costs of depositions and motion practice that may not
11 be necessary.

12 18. In order to conserve the parties' and the Court's resources, to promote judicial
13 economy, and to increase the likelihood of a successful mediation, the parties have agreed, subject
14 to the Court's approval, and subject to the exceptions noted, to stay this matter in order for the
15 parties to complete the agreed upon mediation.

16 19. In the event that the parties are unable to reach a resolution at the mediation, the
17 parties agree to file a joint status report informing the Court of the same by Friday, December 11,
18 2020. The parties further agree to file an amended proposed discovery plan and scheduling order
19 by Friday, December 18, 2020.

20 20. In addition, information obtained during the opt-in process through its completion,
21 as well as supplementation of written discovery, will have a bearing on questions posed in
22 conjunction with various topics during the Rule 30(b)(6) deposition of Defendant's four designees
23 in Florida and Nevada, should the parties not resolve the matter at the mediation and those
24 depositions become necessary.

25 21. Based on the foregoing, the parties stipulate to a stay of proceedings through
26 December 7, 2020. The stay specifically excludes the continuation of the opt-in process and the
27 filing of consent forms by Plaintiff's counsel. In addition, the stay excludes the parties' ongoing
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1 meet and confers and/or any supplementation of previously served discovery, which will also
 2 encompass any further supplementation as it relates to current and future opt-ins plaintiffs. The
 3 parties have agreed to continue to meet and confer and produce information necessary to enable
 4 the parties to properly evaluate liability and damages and conduct a meaningful mediation in good
 5 faith. In addition, Plaintiff specifically reserves the right to seek relief from the Court in the event
 6 the parties reach an impasse on discovery issues related to discovery requests previously
 7 propounded.

8 IT IS SO STIPULATED this 7th day of August, 2020.

9
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ORDER

Based on the parties' stipulations, and for good cause shown, it is hereby ORDERED that the proceedings in this matter are stayed until December 7, 2020. In the event that the parties are unable to reach a resolution at the mediation, the parties agree to file a joint status report informing the Court of the same by Friday, December 11, 2020. The parties further agree to file an amended proposed discovery plan and scheduling order by Friday, December 18, 2020. The stay, however, specifically excludes the continuation of the opt-in process and the filing of consent forms by Plaintiff's counsel. In addition, the stay excludes the parties' ongoing meet and confers and/or supplementation of previously served discovery. Finally, the stay excludes the parties' right to seek relief from the Court in the event the parties reach an impasse on issues related to written discovery requests previously propounded.

IT IS SO ORDERED:



NANCY J. KORPE
United States Magistrate JudgeDATED: August 10, 2020